

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

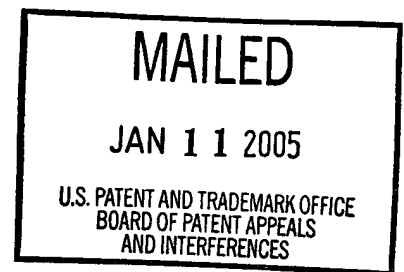
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte RAINER LUDWIG

Appeal No. 2005-0187  
Application No. 09/758,513

ON BRIEF



Before MCQUADE, NASE, and BAHR, Administrative Patent Judges.

MCQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Rainer Ludwig originally took this appeal from the final rejection of claims 1, 3 through 10 and 39.<sup>1</sup> As the examiner has since withdrawn all rejections of claims 6 through 9, the appeal as to these claims is hereby dismissed, leaving for review the standing rejection of claims 1, 3 through 5, 10 and 39. Claims 6

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<sup>1</sup> Claims 1, 6 through 8 and 39 have been amended subsequent to final rejection.

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through 9 and claims 11 through 38, the only other claims pending in the application, stand objected to as depending from a rejected base claim.

#### THE INVENTION

The invention relates to a monitoring device designed for use in industrial environments, e.g., with a machine tool, where it may be subject to potentially harmful working fluids and/or waste materials. Representative claim 1 reads as follows:

1. A monitoring device for checking for a predefined position of a body or for checking for the presence of a body, comprising a pivotal checking element, a motor for driving the checking element, a housing for accommodating the motor, and a seal which is disposed exteriorly of the housing between the checking element and the housing and which extends around a shaft by means of which the checking element is driven, wherein the seal abuts on the checking element and abuts on the housing.

#### THE REJECTION

Claims 1, 3 through 5, 10 and 39 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,130,516 to Huber et al. (Huber).

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Attention is directed to the main and reply briefs (filed October 6, 2003 and February 6, 2004) and the answer (mailed December 11, 2003) for the respective positions of the appellant and the examiner regarding the merits of this rejection.<sup>2</sup>

#### DISCUSSION

Huber discloses a monitoring device which is described in the reference as follows:

[t]he device comprises a scanning head 10 and a controller 12. The scanning head 10 is attached directly to the object to be monitored or to the process area to be monitored, for example, next to the tool to be monitored, e.g. a drill, of a machine tool. The controller 12 can be disposed at a distance in order to be protected, for example, from the assault of chips, coolant and lubricant. The scanning head 10 and the controller 12 are connected together via a cable 14.

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<sup>2</sup> We consider the appealed rejection to be made under 35 U.S.C. § 102(e) rather than under 35 U.S.C. § 102(a) as stated by the examiner. The instant application has a U.S. filing date of January 11, 2001 and a unchallenged claim made pursuant to 35 U.S.C. § 119 for a foreign priority date of January 17, 2000, while the Huber patent has an issue date of October 10, 2000. On this record, Huber is prior art with respect to the instant application under § 102(e), but not under § 102(a). This change in the statutory basis of the rejection does not prejudice the appellant to any meaningful extent. Also, the statement of the appealed rejection in the answer does not include claim 10. The remarks accompanying the rejection indicate, however, that the omission was inadvertent.

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The scanning head 10 shown in FIG. 1 exhibits a cylindrical housing 16, which is sealed against chips, coolant and lubricant and similar disturbing influences. The cable 14 for connecting to the controller 12 is attached to the scanning head 10 by means of a screwable connector 18. In the housing 16 there is an electric motor 20, which is designed as a d.c. motor. The electric motor 20 is fed so as to reverse the polarity by means of a motor driver 22, disposed in the controller 12, via the cable 14. The electric motor 20 drives by way of a precision tooth gearing 24 a shaft 26, which is run coaxially on the face side out of the housing 16. A double lip seal 28 seals the passage of the shaft 26 through the face-sided cover of the housing 16 against chips and coolant. O-ring seals 30 seal the respective face-sided cover[s] of the cylindrical housing 16. A pin holder 32, into which a feeler pin 34 can be clamped, is clamped via a setscrew 36 on the stump of the shaft 26 that projects beyond the housing 16. The feeler pin 34 that is clamped into the pin holder 32 protrudes radially from the shaft 26 [column 2, line 46, through column 3, line 5].

Anticipation is established only when a single prior art reference discloses, expressly or under principles of inherency, each and every element of a claimed invention. RCA Corp. v. Applied Digital Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984). In other words, there must be no difference between the claimed invention and the reference disclosure, as viewed by a person of ordinary skill in the field of the invention. Scripps Clinic & Research Found. v. Genentech Inc., 927 F.2d 1565, 1576, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991).

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As framed by the appellant, the dispositive issue with respect to the rejection of independent claims 1 and 39 is whether Huber meets the limitations in these claims relating to the seal. Claim 1 requires a seal "which is disposed exteriorly of the housing between the checking element and the housing and which extends around a shaft by means of which the checking element is driven, wherein the seal abuts on the checking element and abuts on the housing." Similarly, claim 39 recites a monitoring device comprising a seal "which is disposed exteriorly of the housing between the checking element and the end face of the housing and which extends around said shaft, wherein the seal abuts on the checking element and abuts on the end face of the housing."

The examiner considers these limitations to be met by the face-sided cover of Huber's housing 16 through which the shaft 26 passes. Figure 1 of the reference shows this cover, which is not denoted by a reference numeral, as being screwed into the bore of the housing 16 and as having a flange disposed between the end of the housing 16 and the pin holder 32.

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The examiner's position here is unsound for at least two reasons. To begin with, a person of ordinary skill in the art would not view Huber's face-sided cover to be a seal. The presence of the double lip seal 28 between the cover and the shaft 26 and the O-ring seal 30 between the cover and the housing 16 belies any notion that the cover itself is a seal. Moreover, the fair teachings of Huber, and more particularly the perspective view of the scanning head 10 shown in Figure 1, do not support the examiner's determination that the cover abuts on the checking element (pin holder 32). Indeed, the appellant's explanation (see page 3 in the reply brief) as to why the cover does not abut on the checking element, while itself lacking support in the reference, is far more compelling.


Thus, the examiner's finding that the subject matter recited in independent claims 1 and 39 is anticipated by Huber is not well taken. Accordingly, we shall not sustain the standing 35 U.S.C. § 102(e) rejection of claims 1 and 39, and dependent claims 3 through 5 and 10, as being anticipated by Huber.


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## SUMMARY

The decision of the examiner to reject claims 1, 3 through 5, 10 and 39 is reversed.

REVERSED

  
JOHN P. MCQUADE  
Administrative Patent Judge

  
JEFFREY V. NASE  
Administrative Patent Judge

BOARD OF PATENT

APPEALS AND

## INTERFERENCES

  
JENNIFER D. BAHR  
Administrative Patent Judge

JPM/dpv

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